

ORIGINAL

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CLERK OF DISTRICT COURT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LARRY McIVER,

Plaintiff,

vs.

TARGET CORPORATION dba
TARGET #274; COST PLUS, INC.
dba COST PLUS WORLD
MARKET #145; FRIT
ESCONDIDO PROMENADE, LLC;
LA SALSA, INC. dba LA SALSA
#93; APPLEBEE'S
RESTAURANTS WEST, LLC dba
APPLEBEE'S NEIGHBORHOOD
BAR & GRILL #5711; TOYS 'R' US
- DELAWARE, INC. dba TOYS 'R'
US #5633; PARTY CITY
CORPORATION dba PARTY CITY
OF ESCONDIDO #445; INLAND
WESTERN MDS PORTFOLIO,
LLC,

Defendants.

No.

08 CV 0132 IEG WMC

Plaintiff's Complaint

McIver v. Escondido Promenade
Plaintiff's Complaint

CP

I. SUMMARY

1. This is a civil rights action by plaintiff Larry McIver ("McIver") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

La Salsa #93
1290 Auto Park Way
Escondido, CA 92029
(hereafter "the La Salsa Facility")

Applebee's Neighborhood Bar & Grill #5711
1216 Auto Park Way
Escondido, CA 92029
(hereafter "the Applebee's Facility")

Cost Plus World Market #145
1256 Auto Park Way
Escondido, CA 92029
(hereafter "the Cost Plus Facility")

Toys 'R' Us #5633
1240 Auto Park Way
Escondido, CA 92029
(hereafter "the Toys 'R' Us Facility")

Party City of Escondido #445
1270 Auto Park Way
Escondido, CA 92029
(hereafter "the Party City Facility")

Mervyn's #195
1200 Auto Park Way
Escondido, CA 92029
(hereafter "the Mervyn's Facility")

1 Target #274
 2 1280 Auto Park Way
 3 Escondido, CA 92029
 4 (hereafter "the Target Facility")

5 The Common Area
 6 1210-1290 Auto Park Way
 7 Escondido, CA 92029
 8 (hereafter "the Common Area")

9 2. Pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C.
 10 §§ 12101 et seq.), and related California statutes, McIver seeks damages,
 11 injunctive and declaratory relief, and attorney fees and costs, against:

- 12 • Target Corporation dba Target #274 (hereinafter the "Target Defendant")
- 13 • Cost Plus, Inc. dba Cost Plus World Market #145 and FRIT Escondido
 14 Promenade, LLC (hereinafter the "World Market Defendants")
- 15 • La Salsa, Inc. dba La Salsa #93 and FRIT Escondido Promenade, LLC
 16 (hereinafter the "La Salsa Defendants")
- 17 • Applebee's Restaurants West, LLC dba Applebee's Neighborhood Bar &
 18 Grill #5711 and FRIT Escondido Promenade, LLC (hereinafter the
 19 "Applebee's Defendants")
- 20 • Toys 'R' Us - Delaware, Inc. dba Toys 'R' Us #5633 and FRIT Escondido
 21 Promenade, LLC (hereinafter the "Toys 'R' Us Defendants")
- 22 • Party City Corporation dba Party City of Escondido #445 and FRIT
 23 Escondido Promenade, LLC (hereinafter the "Party City Defendants")
- 24 • Inland Western MDS Portfolio, LLC (hereinafter the "Mervyn's
 25 Defendant")
- 26 • FRIT Escondido Promenade, LLC (hereinafter the "Common Area
 27 Defendant")
- 28

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. McIver's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. The La Salsa Defendants own, operate, or lease the La Salsa Facility, and consist of a person (or persons), firm, or corporation.

8. The Applebee's Defendants own, operate, or lease the Applebee's Facility, and consist of a person (or persons), firm, or corporation.

9. The Cost Plus Defendants own, operate, or lease the Cost Plus Facility, and consist of a person (or persons), firm, or corporation.

10. The Toys 'R' Us Defendants own, operate, or lease the Toys 'R' Us Facility, and consist of a person (or persons), firm, or corporation.

11. The Party City Defendants own, operate, or lease the Party City Facility, and consist of a person (or persons), firm, or corporation.

12. The Mervyn's Defendant owns, operates, or leases the Mervyn's Facility, and consists of a person (or persons), firm, or corporation.

13. The Target Defendant owns, operates, or leases the Target Facility, and consists of a person (or persons), firm, or corporation.

1 22. The Target Facility is a sales or retail establishment, open to the
2 public, which is intended for nonresidential use and whose operation affects
3 commerce.

4 23. The Common Area Facility is open to the public, is intended for
5 nonresidential use and whose operation affects commerce.

6 24. McIver visited these facilities and encountered barriers (both
7 physical and intangible) that interfered with—if not outright denied—his ability
8 to use and enjoy the goods, services, privileges, and accommodations offered at
9 all of the facilities.

10 25. To the extent known by McIver, the barriers at the La Salsa Facility
11 included, but are not limited to, the following:

- 12 • There is no tow-away signage posted;
- 13 • The signage in the “van accessible” parking space is not correct;
- 14 • The slope of the disabled parking space, as well as the adjacent access
15 aisle, exceeds 4.0%;
- 16 • At the end of the access aisle, there is an abrupt change in elevation that
17 exceeds 1 inch;
- 18 • The curb cut ramp has a slope of 12.5% with no handrails;
- 19 • The curb cut ramp (leading towards Carl’s Jr.) has a slope of 13.8 with no
20 handrails;
- 21 • There is no seating designated as being accessible to the disabled;
- 22 • There is no seating for the disabled that has a clear floor space 30 inches
23 wide, 27 inches high, and 19 inches deep;
- 24 • The mirror in the restroom is mounted 46 inches from the floor;
- 25 • The pipes underneath the lavatory are not properly wrapped;
- 26 • The waste receptacle is an obstruction to the lavatory and encroaches upon
27 the clear floor space need to properly access the lavatory; and,
- 28

- 1 • There is insufficient knee and toe clearance due to the protruding pipes
2 underneath the lavatory.

3 These barriers prevented McIver from enjoying full and equal access at the La
4 Salsa Facility.

5 26. McIver was also deterred from visiting the La Salsa Facility
6 because he knew that the La Salsa Facility's goods, services, facilities,
7 privileges, advantages, and accommodations were unavailable to physically
8 disabled patrons (such as himself). He continues to be deterred from visiting the
9 La Salsa Facility because of the future threats of injury created by these barriers.

10 27. To the extent known by McIver, the barriers at the Applebee's
11 included, but are not limited to, the following:

- 12 • The disabled parking space, along with its adjacent access aisle, have
13 slopes and cross slopes that exceed 2.0%;
- 14 • The detectable warnings begin on the ramp rather than at the level landing
15 before it;
- 16 • The platform landing leading into the entrance has a slope that exceeds
17 2.0%;
- 18 • There is insufficient clear floor space at the top of the ramp;
- 19 • There is no International Symbol of Accessibility ("ISA") displayed to
20 indicate that the facility is accessible;
- 21 • The take out window does not have a lowered portion to accommodate a
22 patron in a wheelchair;
- 23 • In the waiting area, there is no space for a disabled patron to wait for an
24 available table
- 25 • On the inside door, there is not 18 inches of strike side clearance on the
26 pull side;
- 27 • There is no seating provided for the disabled that has clear space 30 inches
28 wide, 27 inches high and 19 inches deep;

- 1 • There is no lowered section of the bar to accommodate patrons in
- 2 wheelchairs;
- 3 • The restroom stall door does not have a handle on the interior;
- 4 • The restroom stall door is not self-closing;
- 5 • The grab bar is 34-½ inches to the center;
- 6 • The toilet tissue dispenser protrudes into the maneuvering space needed to
- 7 access the water closet;
- 8 • The toilet tissue dispenser has sharp edges on the side closest to the water
- 9 closet;
- 10 • The pipes underneath the lavatory are not properly wrapped;
- 11 • Due to the protruding pipes, there is insufficient knee and toe clearance
- 12 underneath the lavatory; and,
- 13 • When exiting the restroom, there is not 18 inches of clear floor space on
- 14 the pull side of the door.

15 These barriers prevented McIver from enjoying full and equal access at the
16 Applebee's Facility.

17 28. McIver was also deterred from visiting the Applebee's Facility
18 because he knew that the Applebee's Facility's goods, services, facilities,
19 privileges, advantages, and accommodations were unavailable to physically
20 disabled patrons (such as himself). He continues to be deterred from visiting the
21 Applebee's Facility because of the future threats of injury created by these
22 barriers.

23 29. To the extent known by McIver, the barriers at the Cost Plus
24 Facility included, but are not limited to, the following:

- 25 • The slope of the ramp is 9.2% with no handrails;
- 26 • The ramp at the north side of the World Market Facility has a slope of
- 27 7.8% with no handrails;
- 28

- 1 • There is no checkstand designated as being accessible and to remain open
- 2 at all times;
- 3 • All of the pay-point machines are too high;
- 4 • The accessible route to the restroom is blocked by merchandise;
- 5 • The toilet tissue dispenser is mounted approximately 4-½ feet from the
- 6 back wall;
- 7 • The toilet tissue dispenser is mounted more than 19 inches from the floor;
- 8 • Due to its location over the side grab bar, the toilet tissue dispenser
- 9 obstructs the use of the side grab bar;
- 10 • The side grab bar is not mounted 12 inches from the back wall;
- 11 • The pipes underneath the lavatory are not properly wrapped; and,
- 12 • Due to the protrusion of the pipes, there is not sufficient knee and toe
- 13 clearance underneath the lavatory.

14 These barriers prevented McIver from enjoying full and equal access in the Cost
15 Plus Facility.

16 30. McIver was also deterred from visiting the Cost Plus Facility
17 because he knew that the Cost Plus Facility's goods, services, facilities,
18 privileges, advantages, and accommodations were unavailable to physically
19 disabled patrons (such as himself). He continues to be deterred from visiting the
20 Cost Plus Facility because of the future threats of injury created by these barriers.

21 31. To the extent known by McIver, the barriers at the Toys 'R' Us
22 Facility included, but are not limited to, the following:

- 23 • The platform in front of the entry is not level;
- 24 • The disabled dressing room is not accessible and is improperly configured;
- 25 • There is improper directional signage leading to the restroom;
- 26 • Check out stand #3 is designated as accessible, however it is closed and is
- 27 full of merchandise;
- 28

- 1 • The toilet tissue dispenser protrudes into the clear maneuvering space
- 2 needed to access the water closet;
- 3 • The toilet tissue dispenser is an obstruction to the use of the side grab bar;
- 4 • The pipes underneath the lavatory are not properly wrapped; and,
- 5 • Due to the protrusion of the pipes, there is insufficient knee and toe
- 6 clearance underneath the lavatory.

7 These barriers prevented McIver from enjoying full and equal access.

8 32. McIver was also deterred from visiting the Toys 'R' Us Facility
9 because he knew that the Toys 'R' Us Facility's goods, services, facilities,
10 privileges, advantages, and accommodations were unavailable to physically
11 disabled patrons (such as himself). He continues to be deterred from visiting the
12 Toys 'R' Us Facility because of the future threats of injury created by these
13 barriers.

14 33. To the extent known by McIver, the barriers at the Party City
15 included, but are not limited to, the following:

- 16 • There is no ISA mounted at the entrance;
- 17 • The dressing room does not have the proper wheelchair transfer seating,
- 18 nor a full length mirror;
- 19 • The route to the restroom includes stairs with no alternative route for
- 20 disabled patrons;
- 21 • The disposable seat cover dispenser is placed on top of the back grab bar,
- 22 over the water closet;
- 23 • The water closet is an obstruction to the disposable seat covers;
- 24 • Due to the disposable seat covering being placed on the back grab bar, the
- 25 bar is no longer able to be used;
- 26 • The trash receptacle encroaches into the clear floor space needed at the
- 27 water closet;
- 28

- 1 • The toilet tissue dispenser protrudes into the clear space needed at the
- 2 water closet;
- 3 • The toilet tissue dispenser is mounted 43 inches from the back wall
- 4 • The pipes underneath the lavatory are improperly wrapped; and,
- 5 • Due to the protrusion of the pipes, there is insufficient knee and toe
- 6 clearance underneath the lavatory.

7 These barriers prevented McIver from enjoying full and equal access of the Party
8 City Facility.

9 34. McIver was also deterred from visiting the Party City Facility
10 because he knew that the Party City Facility's goods, services, facilities,
11 privileges, advantages, and accommodations were unavailable to physically
12 disabled patrons (such as himself). He continues to be deterred from visiting the
13 Party City Facility because of the future threats of injury created by these
14 barriers.

15 35. To the extent known by McIver, the barriers at the Mervyn's
16 Facility included, but are not limited to, the following:

- 17 • There is no accessible route from the disabled parking spaces to the
- 18 entrance;
- 19 • The accessible parking spaces do not have the correct signage;
- 20 • The accessible parking space has a cross slope of 2.9%;
- 21 • The adjacent access aisle has a cross slope of 3.1%;
- 22 • The van accessible parking space directly in front has a cross slope of
- 23 2.5%;
- 24 • The accessible space directly across from the van accessible space (*see*
- 25 *above*) has a slope of 2.2% and a cross slope of 3.9%;
- 26 • The parking space at the southwest corner has a cross slope of 2.5%
- 27 • The sidewalk at the northwest corner has a cross slope of 3.0%.
- 28

1 These barriers prevented McIver from enjoying full and equal access of the
2 Mervyn's Facility.

3 36. McIver was also deterred from visiting the Mervyn's Facility
4 because he knew that the Mervyn's Facility's goods, services, facilities,
5 privileges, advantages, and accommodations were unavailable to physically
6 disabled patrons (such as himself). He continues to be deterred from visiting the
7 Mervyn's Facility because of the future threats of injury created by these barriers.

8 37. To the extent known by McIver, the barriers at the Target Facility
9 included, but are not limited to, the following:

- 10 • One of the disabled parking spaces has a cross slope of 3.6%;
- 11 • There is a cross slope of 2.5% in the adjacent access aisle;
- 12 • The "van accessible" parking space has a cross slope of 3.9%;
- 13 • The adjacent access aisle has a cross slope of 4.4%;
- 14 • The accessible space directly in front of the entrance has a cross slope of
- 15 2.5%;
- 16 • The adjacent access aisle has a cross slope of 2.9%;
- 17 • The accessible space furthest to the west has a cross slope of 3.2%;
- 18 • The adjacent access aisle has a cross slope of 3.6%;
- 19 • The disabled space in front of the entrance (but across the vehicular way)
- 20 has no signage and a cross slope of 3.6%;
- 21 • The adjacent access aisle has a cross slope of 3.1%;
- 22 • The eastern-most space has a cross slope of 2.5%;
- 23 • The northern-most space has a cross slope of 4.5%;
- 24 • The adjacent access aisle has a cross slope of 5.1%
- 25 • The curb ramp at the north side has a slope of 8.3%, a cross slope of 2.9%,
- 26 and no hand rails (NOT the ramp leading to Carl's Jr.);
- 27 • The curb cut ramp near the Garden Center has a slope of 10.2%;;
- 28 • There is no designated disabled seating in the café area;

- 1 • There is no seating in the café area that has 30 inches wide by 27 inches
- 2 high by 19 inches deep of clear floor space to accommodate a wheelchair
- 3 occupant;
- 4 • There are no checkout lanes designated as being accessible to the disabled;
- 5 • The pay-point machines are too high;
- 6 • The latch on the interior door of the disabled restroom stall is not located
- 7 below the lock;
- 8 • The toilet tissue dispenser is mounted too high and above the side grab
- 9 bar;
- 10 • The side grab bar is mounted only 8 inches from the back wall;
- 11 • The toilet tissue dispenser is an obstruction to the use of the side grab bar;
- 12 • The pipes underneath the lavatory are improperly wrapped; and,
- 13 • Due to the protrusion of the pipes, there is insufficient knee and toe
- 14 clearance underneath the lavatory.

15 These barriers prevented McIver from enjoying full and equal access at the
16 Target Facility.

17 38. McIver was also deterred from visiting the Target Facility because
18 he knew that the Target Facility's goods, services, facilities, privileges,
19 advantages, and accommodations were unavailable to physically disabled
20 patrons (such as himself). He continues to be deterred from visiting the Target
21 Facility because of the future threats of injury created by these barriers.

22 39. To the extent known by McIver, the barriers at the Common Area
23 Facility included, but are not limited to, the following:

- 24 • There are no hand rails on any of the ramps;

25 West Side of Common Area Facility:

- 26 • The van accessible space has a cross slope of 3.6%;
- 27 • The adjacent access aisle has a cross slope of 3.2% and is only 5 feet wide;
- 28 • There is no accessible route from the parking space and access aisle;

- 1 • The curb cut ramp has a slope of 10.7% with no handrails;
- 2 • The detectable warnings are not visually contrasting, are not the correct
- 3 size, and start on the slope rather than on the level landing before the
- 4 ramp;

5 North Side of Common Area Facility (in front of GNC):

- 6 • The curb-cut ramp has a slope of 10.6%;
- 7 • There is an abrupt change in elevation at the curb cut ramp;

8 Northwest Side of Common Area Facility (in front of Plato's Closet):

- 9 • The slope of the sidewalk is 12.9%;
- 10 • The slope approaching the curb cut ramp is 11.5% with no handrails;
- 11 • The slope of the disabled parking space (in front of Dryclean World) is
- 12 2.9%
- 13 • The van accessible space has an abrupt change in elevation and is too
- 14 narrow;
- 15 • The disabled parking spaces have no signage;
- 16 • The curb cut out has a slope of 13.8%;
- 17 • There is no level platform of the door on the way into the Toys 'R' Us
- 18 Facility – the slope is 4.7%;
- 19 • The cross slope of the cross walk is 8.7%

20 North side of Common Area Facility (north side of the Toys 'R' Us Facility):

- 21 • The ramp has a slope of 8.0% with no handrails;
- 22 • The ramp at the corner has a slope of 6.3%;
- 23 • The disabled parking space (in front of Samurai Sam's) has a slope of
- 24 3.5%;
- 25 • The adjacent access aisle has a slope of 3.7%;
- 26 • The van accessible space has a slope of 1.8% and is too narrow;

27 Common Area Facility (between the World Market Facility and Justice)

- 28 • There are wheel stops in the disabled parking spaces

- 1 • The curb cut ramp has a slope of 9.7% with no handrails and has an abrupt
- 2 change in elevation;
- 3 • The disabled space to on the south side has a slope of 2.9%;
- 4 • The adjacent access aisle has a slope of 3.0%
- 5 • The van accessible space has a slope of 3.3%;
- 6 • The access aisle across from the above van accessible space has a slope of
- 7 4.5%;

8 Common Area Facility (in front of Justice):

- 9 • The ramp has a slope of 12.3% with no handrails;
- 10 • The northern-most disabled space has a cross slope of 3.4%;

11 Common Area Facility (South end of TJ Maxx):

- 12 • The ramp has a slope of 12.4% with no handrails;
- 13 • The sidewalk has a cross slope of 2.4%;

14 Common Area Facility (in front of Frederick's of Hollywood):

- 15 • The parking space has a slope of 5.5%;
- 16 • The adjacent access aisle has a slope of 4.5%;
- 17 • The van accessible space has a slope of 7.5%;

18 Common Area Facility (in front of City Financial):

- 19 • The ramp has a slope of 7.9% with no handrails;

20 Common Area Facility (in front of the Men's Warehouse):

- 21 • The sidewalk has a cross slope of 4.2%;
- 22 • The ramp has a slope ranging from 8.4% to 14.9% with no handrails;

23 These barriers prevented McIver from enjoying full and equal access at the
24 Common Area Facility.

25 40. McIver was also deterred from visiting the Common Area Facility
26 because he knew that the Common Area Facility's goods, services, facilities,
27 privileges, advantages, and accommodations were unavailable to physically
28 disabled patrons (such as himself). He continues to be deterred from visiting the

1 Common Area Facility because of the future threats of injury created by these
2 barriers.

3 41. McIver also encountered barriers at the facilities, which violate state
4 and federal law, but were unrelated to his disability. Nothing within this
5 Complaint, however, should be construed as an allegation that McIver is seeking
6 to remove barriers unrelated to his disability.

7 42. The La Salsa Defendants knew that these elements and areas of the
8 La Salsa Facility were inaccessible, violate state and federal law, and interfere
9 with (or deny) access to the physically disabled. Moreover, the La Salsa
10 Defendants have the financial resources to remove these barriers from the La
11 Salsa Facility (without much difficulty or expense), and make the La Salsa
12 Facility accessible to the physically disabled. To date, however, the La Salsa
13 Defendants refuse to either remove those barriers or seek an unreasonable
14 hardship exemption to excuse non-compliance.

15 43. At all relevant times, the La Salsa Defendants have possessed and
16 enjoyed sufficient control and authority to modify the La Salsa Facility to
17 remove impediments to wheelchair access and to comply with the Americans
18 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The La
19 Salsa Defendants have not removed such impediments and have not modified the
20 La Salsa Facility to conform to accessibility standards. The La Salsa Defendants
21 have intentionally maintained the La Salsa Facility in its current condition and
22 have intentionally refrained from altering La Salsa Facility so that it complies
23 with the accessibility standards.

24 44. McIver further alleges that the (continued) presence of barriers at
25 the La Salsa Facility is so obvious as to establish the La Salsa Defendants'
26 discriminatory intent.¹ On information and belief, McIver avers that evidence of
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¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 this discriminatory intent includes the La Salsa Defendants' refusal to adhere to
2 relevant building standards; disregard for the building plans and permits issued
3 for the facility; conscientious decision to the architectural layout (as it currently
4 exists) at the La Salsa Facility; decision not to remove barriers from the La Salsa
5 Facility; and allowance that the La Salsa Facility continues to exist in its non-
6 compliant state. McIver further alleges, on information and belief, that the La
7 Salsa Defendants are not in the midst of a remodel, and that the barriers present
8 at the facility are not isolated (or temporary) interruptions in access due to
9 maintenance or repairs.²

10 45. The Applebee's Defendants knew that these elements and areas of
11 the Applebee's Facility were inaccessible, violate state and federal law, and
12 interfere with (or deny) access to the physically disabled. Moreover, the
13 Applebee's Defendants have the financial resources to remove these barriers
14 from the Applebee's Facility (without much difficulty or expense), and make the
15 Applebee's Facility accessible to the physically disabled. To date, however, the
16 Applebee's Defendants refuse to either remove those barriers or seek an
17 unreasonable hardship exemption to excuse non-compliance.

18 46. At all relevant times, the Applebee's Defendants have possessed and
19 enjoyed sufficient control and authority to modify the Applebee's Facility to
20 remove impediments to wheelchair access and to comply with the Americans
21 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
22 Applebee's Defendants have not removed such impediments and have not
23 modified the Applebee's Facility to conform to accessibility standards. The
24 Applebee's Defendants have intentionally maintained the Applebee's Facility in
25 its current condition and have intentionally refrained from altering the
26 Applebee's Facility so that it complies with the accessibility standards.

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² Id.; 28 C.F.R. § 36.211(b)
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1 47. McIver further alleges that the (continued) presence of barriers at
2 the Applebee's Facility is so obvious as to establish The Applebee's Defendants'
3 discriminatory intent.³ On information and belief, McIver avers that evidence of
4 this discriminatory intent includes the Applebee's Defendants' refusal to adhere
5 to relevant building standards; disregard for the building plans and permits
6 issued for the Applebee's Facility; conscientious decision to the architectural
7 layout (as it currently exists) at the Applebee's Facility; decision not to remove
8 barriers from the Applebee's Facility; and allowance that the Applebee's Facility
9 continues to exist in its non-compliant state. McIver further alleges, on
10 information and belief, that the Applebee's Defendants are not in the midst of a
11 remodel, and that the barriers present at the Applebee's Facility are not isolated
12 (or temporary) interruptions in access due to maintenance or repairs.⁴

13 48. The Cost Plus Defendants knew that these elements and areas of the
14 Cost Plus Facility were inaccessible, violate state and federal law, and interfere
15 with (or deny) access to the physically disabled. Moreover, the Cost Plus
16 Defendants have the financial resources to remove these barriers from the Cost
17 Plus Facility (without much difficulty or expense), and make the Cost Plus
18 Facility accessible to the physically disabled. To date, however, the Cost Plus
19 Defendants refuse to either remove those barriers or seek an unreasonable
20 hardship exemption to excuse non-compliance.

21 49. At all relevant times, the Cost Plus Defendants have possessed and
22 enjoyed sufficient control and authority to modify the Cost Plus Facility to
23 remove impediments to wheelchair access and to comply with the Americans
24 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The Cost
25 Plus Defendants have not removed such impediments and have not modified the
26 Cost Plus Facility to conform to accessibility standards. The Cost Plus
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28 ³ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁴ Id.; 28 C.F.R. § 36.211(b)

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1 Defendants have intentionally maintained the Cost Plus Facility in its current
2 condition and have intentionally refrained from altering the Cost Plus Facility so
3 that it complies with the accessibility standards.

4 50. McIver further alleges that the (continued) presence of barriers at
5 the Cost Plus Facility is so obvious as to establish The Cost Plus Defendants'
6 discriminatory intent.⁵ On information and belief, McIver avers that evidence of
7 this discriminatory intent includes the Cost Plus Defendants' refusal to adhere to
8 relevant building standards; disregard for the building plans and permits issued
9 for the Cost Plus Facility; conscientious decision to the architectural layout (as it
10 currently exists) at the Cost Plus Facility; decision not to remove barriers from
11 the Cost Plus Facility; and allowance that the Cost Plus Facility continues to
12 exist in its non-compliant state. McIver further alleges, on information and
13 belief, that the Cost Plus Defendants are not in the midst of a remodel, and that
14 the barriers present at the Cost Plus Facility are not isolated (or temporary)
15 interruptions in access due to maintenance or repairs.⁶

16 51. The Toys 'R' Us Defendants knew that these elements and areas of
17 the Toys 'R' Us Facility were inaccessible, violate state and federal law, and
18 interfere with (or deny) access to the physically disabled. Moreover, the Toys 'R'
19 Us Defendants have the financial resources to remove these barriers from the
20 Toys 'R' Us Facility (without much difficulty or expense), and make the facility
21 accessible to the physically disabled. To date, however, the Toys 'R' Us
22 Defendants refuse to either remove those barriers or seek an unreasonable
23 hardship exemption to excuse non-compliance.

24 52. At all relevant times, the Toys 'R' Us Defendants have possessed
25 and enjoyed sufficient control and authority to modify the Toys 'R' Us Facility to
26 remove impediments to wheelchair access and to comply with the Americans
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28 ⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁶ Id.; 28 C.F.R. § 36.211(b)

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1 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
2 Toys 'R' Us Defendants have not removed such impediments and have not
3 modified the Toys 'R' Us Facility to conform to accessibility standards. The
4 Toys 'R' Us Defendants have intentionally maintained the Toys 'R' Us Facility in
5 its current condition and have intentionally refrained from altering the Toys 'R'
6 Us Facility so that it complies with the accessibility standards.

7 53. McIver further alleges that the (continued) presence of barriers at
8 the Toys 'R' Us Facility is so obvious as to establish the Toys 'R' Us Defendants'
9 discriminatory intent.⁷ On information and belief, McIver avers that evidence of
10 this discriminatory intent includes the Toys 'R' Us Defendants' refusal to adhere
11 to relevant building standards; disregard for the building plans and permits
12 issued for the Toys 'R' Us Facility; conscientious decision to the architectural
13 layout (as it currently exists) at the Toys 'R' Us Facility; decision not to remove
14 barriers from the Toys 'R' Us Facility; and allowance that the Toys 'R' Us Facility
15 continues to exist in its non-compliant state. McIver further alleges, on
16 information and belief, that the Toys 'R' Us Defendants are not in the midst of a
17 remodel, and that the barriers present at the Toys 'R' Us Facility are not isolated
18 (or temporary) interruptions in access due to maintenance or repairs.⁸

19 54. The Party City Defendants knew that these elements and areas of the
20 Party City Facility were inaccessible, violate state and federal law, and interfere
21 with (or deny) access to the physically disabled. Moreover, the Party City
22 Defendants have the financial resources to remove these barriers from the Party
23 City Facility (without much difficulty or expense), and make the Party City
24 Facility accessible to the physically disabled. To date, however, the Party City
25 Defendants refuse to either remove those barriers or seek an unreasonable
26 hardship exemption to excuse non-compliance.

27
28 ⁷ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁸ Id.; 28 C.F.R. § 36.211(b)

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1 55. At all relevant times, the Party City Defendants have possessed and
2 enjoyed sufficient control and authority to modify the Party City Facility to
3 remove impediments to wheelchair access and to comply with the Americans
4 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
5 Party City Defendants have not removed such impediments and have not
6 modified the Party City Facility to conform to accessibility standards. The Party
7 City Defendants have intentionally maintained the Party City Facility in its
8 current condition and have intentionally refrained from altering the Party City
9 Facility so that it complies with the accessibility standards.

10 56. McIver further alleges that the (continued) presence of barriers at
11 the facility is so obvious as to establish the Party City Defendants'
12 discriminatory intent.⁹ On information and belief, McIver avers that evidence of
13 this discriminatory intent includes the Party City Defendants' refusal to adhere to
14 relevant building standards; disregard for the building plans and permits issued
15 for the Party City Facility; conscientious decision to the architectural layout (as it
16 currently exists) at the Party City Facility; decision not to remove barriers from
17 the Party City Facility; and allowance that the Party City Facility continues to
18 exist in its non-compliant state. McIver further alleges, on information and
19 belief, that the Party City Defendants are not in the midst of a remodel, and that
20 the barriers present at the Party City Facility are not isolated (or temporary)
21 interruptions in access due to maintenance or repairs.¹⁰

22 57. The Mervyn's Defendants knew that these elements and areas of the
23 Mervyn's Facility were inaccessible, violate state and federal law, and interfere
24 with (or deny) access to the physically disabled. Moreover, the Mervyn's
25 Defendants have the financial resources to remove these barriers from the
26 Mervyn's Facility (without much difficulty or expense), and make the Mervyn's
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28 ⁹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

¹⁰ Id.; 28 C.F.R. § 36.211(b)

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1 Facility accessible to the physically disabled. To date, however, the Mervyn's
2 Defendants refuse to either remove those barriers or seek an unreasonable
3 hardship exemption to excuse non-compliance.

4 58. At all relevant times, the Mervyn's Defendants have possessed and
5 enjoyed sufficient control and authority to modify the Mervyn's Facility to
6 remove impediments to wheelchair access and to comply with the Americans
7 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
8 Mervyn's Defendants have not removed such impediments and have not
9 modified the Mervyn's Facility to conform to accessibility standards. The
10 Mervyn's Defendants have intentionally maintained the Mervyn's Facility in its
11 current condition and have intentionally refrained from altering the Mervyn's
12 Facility so that it complies with the accessibility standards.

13 59. McIver further alleges that the (continued) presence of barriers at
14 the facility is so obvious as to establish the Mervyn's Defendants' discriminatory
15 intent.¹¹ On information and belief, McIver avers that evidence of this
16 discriminatory intent includes the Mervyn's Defendants' refusal to adhere to
17 relevant building standards; disregard for the building plans and permits issued
18 for the Mervyn's Facility; conscientious decision to the architectural layout (as it
19 currently exists) at the Mervyn's Facility; decision not to remove barriers from
20 the Mervyn's Facility; and allowance that the Mervyn's Facility continues to exist
21 in its non-compliant state. McIver further alleges, on information and belief, that
22 the Mervyn's Defendants are not in the midst of a remodel, and that the barriers
23 present at the Mervyn's Facility are not isolated (or temporary) interruptions in
24 access due to maintenance or repairs.¹²

25 60. The Target Defendant knew that these elements and areas of the
26 Target Facility were inaccessible, violate state and federal law, and interfere with
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28 ¹¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

¹² Id.; 28 C.F.R. § 36.211(b)

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1 (or deny) access to the physically disabled. Moreover, the Target Defendant has
2 the financial resources to remove these barriers from the Target Facility (without
3 much difficulty or expense), and make the Target Facility accessible to the
4 physically disabled. To date, however, the Target Defendant refuses to either
5 remove those barriers or seek an unreasonable hardship exemption to excuse
6 non-compliance.

7 61. At all relevant times, the Target Defendant has possessed and
8 enjoyed sufficient control and authority to modify the Target Facility to remove
9 impediments to wheelchair access and to comply with the Americans with
10 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Target
11 Defendant has not removed such impediments and has not modified the Target
12 Facility to conform to accessibility standards. The Target Defendant has
13 intentionally maintained the Target Facility in its current condition and has
14 intentionally refrained from altering the Target Facility property so that it
15 complies with the accessibility standards.

16 62. McIver further alleges that the (continued) presence of barriers at
17 the Target Facility is so obvious as to establish the Target Defendant's
18 discriminatory intent.¹³ On information and belief, McIver avers that evidence
19 of this discriminatory intent includes The Target Defendant's refusal to adhere to
20 relevant building standards; disregard for the building plans and permits issued
21 for the Target Facility; conscientious decision to the architectural layout (as it
22 currently exists) at the Target Facility; decision not to remove barriers the Target
23 Facility; and allowance that the Target Facility continues to exist in its non-
24 compliant state. McIver further alleges, on information and belief, that the
25 Target Defendant is not in the midst of a remodel, and that the barriers present at
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¹³ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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1 the Target Facility are not isolated (or temporary) interruptions in access due to
2 maintenance or repairs.¹⁴

3 63. The Common Area Defendant knew that these elements and areas of
4 the Common Area Facility were inaccessible, violate state and federal law, and
5 interfere with (or deny) access to the physically disabled. Moreover, the
6 Common Area Defendant has the financial resources to remove these barriers
7 from the Common Area Facility (without much difficulty or expense), and make
8 the Common Area Facility accessible to the physically disabled. To date,
9 however, the Common Area Defendant refuses to either remove those barriers or
10 seek an unreasonable hardship exemption to excuse non-compliance.

11 64. At all relevant times, the Common Area Defendant has possessed
12 and enjoyed sufficient control and authority to modify the Common Area Facility
13 to remove impediments to wheelchair access and to comply with the Americans
14 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
15 Common Area Defendant has not removed such impediments and has not
16 modified the Common Area Facility to conform to accessibility standards. The
17 Common Area Defendant has intentionally maintained the Common Area
18 Facility in its current condition and has intentionally refrained from altering the
19 Common Area Facility so that it complies with the accessibility standards.

20 65. McIver further alleges that the (continued) presence of barriers at
21 the Common Area Facility is so obvious as to establish the Common Area
22 Defendant's discriminatory intent.¹⁵ On information and belief, McIver avers
23 that evidence of this discriminatory intent includes the Common Area
24 Defendant's refusal to adhere to relevant building standards; disregard for the
25 building plans and permits issued for the Common Area Facility; conscientious
26 decision to the architectural layout (as it currently exists) at the Common Area
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28 ¹⁴ Id.; 28 C.F.R. § 36.211(b)

¹⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
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Facility; decision not to remove barriers from the Common Area Facility; and allowance that the Common Area Facility continues to exist in its non-compliant state. McIver further alleges, on information and belief, that the Common Area Defendant is not in the midst of a remodel, and that the barriers present at the Common Area Facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.¹⁶

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The La Salsa Facility)

66. McIver incorporates the allegations contained in paragraphs 1 through 65 for this claim.

67. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

68. The La Salsa Defendants discriminated against McIver by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the La Salsa Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

69. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily

¹⁶ Id.; 28 C.F.R. § 36.211(b)
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1 achievable” is defined as “easily accomplishable and able to be carried out
2 without much difficulty or expense.” *Id.* § 12181(9).

3 70. When an entity can demonstrate that removal of a barrier is not
4 readily achievable, a failure to make goods, services, facilities, or
5 accommodations available through alternative methods is also specifically
6 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

7 71. Here, McIver alleges that the La Salsa Defendants can easily
8 remove the architectural barriers at the La Salsa Facility without much difficulty
9 or expense, and that the La Salsa Defendants violated the ADA by failing to
10 remove those barriers, when it was readily achievable to do so.

11 72. In the alternative, if it was not “readily achievable” for the La Salsa
12 Defendants to remove the La Salsa Facility’s barriers, then the La Salsa
13 Defendants violated the ADA by failing to make the required services available
14 through alternative methods, which are readily achievable.

15 Failure to Design and Construct an Accessible Facility

16 73. On information and belief, the La Salsa Facility was designed or
17 constructed (or both) after January 26, 1992—independently triggering access
18 requirements under Title III of the ADA.

19 74. The ADA also prohibits designing and constructing facilities for
20 first occupancy after January 26, 1993, that aren’t readily accessible to, and
21 usable by, individuals with disabilities when it was structurally practicable to do
22 so. 42 U.S.C. § 12183(a)(1).

23 75. Here, the La Salsa Defendants violated the ADA by designing or
24 constructing (or both) the La Salsa Facility in a manner that was not readily
25 accessible to the physically disabled public—including McIver—when it was
26 structurally practical to do so.¹⁷

27
28 ¹⁷ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 Failure to Make an Altered Facility Accessible

2 76. On information and belief, the La Salsa Facility was modified after
3 January 26, 1992, independently triggering access requirements under the ADA.

4 77. The ADA also requires that facilities altered in a manner that affects
5 (or could affect) its usability must be made readily accessible to individuals with
6 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
7 an area that contains a facility's primary function also requires adding making
8 the paths of travel, bathrooms, telephones, and drinking fountains serving that
9 area accessible to the maximum extent feasible. Id.

10 78. Here, the La Salsa Defendants altered the La Salsa Facility in a
11 manner that violated the ADA and was not readily accessible to the physically
12 disabled public—including McIver—to the maximum extent feasible.

13 Failure to Modify Existing Policies and Procedures

14 79. The ADA also requires reasonable modifications in policies,
15 practices, or procedures, when necessary to afford such goods, services,
16 facilities, or accommodations to individuals with disabilities, unless the entity
17 can demonstrate that making such modifications would fundamentally alter their
18 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

19 80. Here, the La Salsa Defendants violated the ADA by failing to make
20 reasonable modifications in policies, practices, or procedures at the La Salsa
21 Facility, when these modifications were necessary to afford (and would not
22 fundamentally alter the nature of) these goods, services, facilities, or
23 accommodations.

24 81. McIver seeks all relief available under the ADA (*i.e.*, injunctive
25 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
26 U.S.C. § 12205.

82. McIver also seeks a finding from this Court (*i.e.*, declaratory relief) that the La Salsa Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

VII. SECOND CLAIM

Disabled Persons Act

(The La Salsa Facility)

83. McIver incorporates the allegations contained in paragraphs 1 through 82 for this claim.

84. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

85. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

86. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

87. Here, the La Salsa Defendants discriminated against the physically disabled public—including McIver—by denying them full and equal access to the La Salsa Facility. The La Salsa Defendants also violated McIver’s rights under the ADA, and, therefore, infringed upon or violated (or both) McIver’s rights under the Disabled Persons Act.

88. For each offense of the Disabled Persons Act, McIver seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

1 97. McIver also seeks to enjoin the La Salsa Defendants from violating
2 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
3 incurred under California Civil Code § 52(a).

4 IX. FOURTH CLAIM

5 **Denial of Full and Equal Access to Public Facilities**

6 (The La Salsa Facility)

7 98. McIver incorporates the allegations contained in paragraphs 1
8 through 97 for this claim.

9 99. Health and Safety Code § 19955(a) states, in part, that: California
10 public accommodations or facilities (built with private funds) shall adhere to the
11 provisions of Government Code § 4450.

12 100. Health and Safety Code § 19959 states, in part, that: Every existing
13 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
14 altered or structurally repaired, is required to comply with this chapter.

15 101. McIver alleges the La Salsa Facility is a public accommodation
16 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
17 and Safety Code or Government Code § 4450 (or both), and that the La Salsa
18 Facility was not exempt under Health and Safety Code § 19956.

19 102. The La Salsa Defendants' non-compliance with these requirements
20 at the La Salsa Facility aggrieved (or potentially aggrieved) McIver and other
21 persons with physical disabilities. Accordingly, he seeks injunctive relief and
22 attorney fees pursuant to Health and Safety Code § 19953.

23 X. FIFTH CLAIM

24 **Americans with Disabilities Act of 1990**

25 Denial of "Full and Equal" Enjoyment and Use

26 (The Applebee's Facility)

27 103. McIver incorporates the allegations contained in paragraphs 1
28 through 102 for this claim.

1 104. Title III of the ADA holds as a “general rule” that no individual
2 shall be discriminated against on the basis of disability in the full and equal
3 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
4 offered by any person who owns, operates, or leases a place of public
5 accommodation. 42 U.S.C. § 12182(a).

6 105. The Applebee's Defendants' discriminated against McIver by
7 denying “full and equal enjoyment” and use of the goods, services, facilities,
8 privileges or accommodations of the Applebee's Facility during each visit and
9 each incident of deterrence.

10 Failure to Remove Architectural Barriers in an Existing Facility

11 106. The ADA specifically prohibits failing to remove architectural
12 barriers, which are structural in nature, in existing facilities where such removal
13 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
14 achievable” is defined as “easily accomplishable and able to be carried out
15 without much difficulty or expense.” *Id.* § 12181(9).

16 107. When an entity can demonstrate that removal of a barrier is not
17 readily achievable, a failure to make goods, services, facilities, or
18 accommodations available through alternative methods is also specifically
19 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

20 108. Here, McIver alleges that the Applebee's Defendants can easily
21 remove the architectural barriers at the Applebee's Facility without much
22 difficulty or expense, and that the Applebee's Defendants violated the ADA by
23 failing to remove those barriers, when it was readily achievable to do so.

24 109. In the alternative, if it was not “readily achievable” for the
25 Applebee's Defendants to remove the Applebee's Facility's barriers, then the
26 Applebee's Defendants violated the ADA by failing to make the required
27 services available through alternative methods, which are readily achievable.
28

1 Failure to Design and Construct an Accessible Facility

2 110. On information and belief, the Applebee's Facility was designed or
3 constructed (or both) after January 26, 1992—independently triggering access
4 requirements under Title III of the ADA.

5 111. The ADA also prohibits designing and constructing facilities for
6 first occupancy after January 26, 1993, that aren't readily accessible to, and
7 usable by, individuals with disabilities when it was structurally practicable to do
8 so. 42 U.S.C. § 12183(a)(1).

9 112. Here, the Applebee's Defendants violated the ADA by designing or
10 constructing (or both) the Applebee's Facility in a manner that was not readily
11 accessible to the physically disabled public—including McIver—when it was
12 structurally practical to do so.¹⁸

13 Failure to Make an Altered Facility Accessible

14 113. On information and belief, the Applebee's Facility was modified
15 after January 26, 1992, independently triggering access requirements under the
16 ADA.

17 114. The ADA also requires that facilities altered in a manner that affects
18 (or could affect) its usability must be made readily accessible to individuals with
19 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
20 an area that contains a facility's primary function also requires adding making
21 the paths of travel, bathrooms, telephones, and drinking fountains serving that
22 area accessible to the maximum extent feasible. Id.

23 115. Here, the Applebee's Defendants altered the Applebee's Facility in a
24 manner that violated the ADA and was not readily accessible to the physically
25 disabled public—including McIver—to the maximum extent feasible.

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28 ¹⁸ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 Failure to Modify Existing Policies and Procedures

2 116. The ADA also requires reasonable modifications in policies,
3 practices, or procedures, when necessary to afford such goods, services,
4 facilities, or accommodations to individuals with disabilities, unless the entity
5 can demonstrate that making such modifications would fundamentally alter their
6 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

7 117. Here, the Applebee's Defendants violated the ADA by failing to
8 make reasonable modifications in policies, practices, or procedures at the
9 Applebee's Facility, when these modifications were necessary to afford (and
10 would not fundamentally alter the nature of) these goods, services, facilities, or
11 accommodations.

12 118. McIver seeks all relief available under the ADA (*i.e.*, injunctive
13 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
14 U.S.C. § 12205.

15 119. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
16 that Applebee's violated the ADA in order to pursue damages under California's
17 Unruh Civil Rights Act or Disabled Persons Act.

18 **XI. SIXTH CLAIM**

19 **Disabled Persons Act**

20 (The Applebee's Facility)

21 120. McIver incorporates the allegations contained in paragraphs 1
22 through 119 for this claim.

23 121. California Civil Code § 54 states, in part, that: Individuals with
24 disabilities have the same right as the general public to the full and free use of
25 the streets, sidewalks, walkways, public buildings and facilities, and other public
26 places.

27 122. California Civil Code § 54.1 also states, in part, that: Individuals
28 with disabilities shall be entitled to full and equal access to accommodations,

1 facilities, telephone facilities, places of public accommodation, and other places
2 to which the general public is invited.

3 123. Both sections specifically incorporate (by reference) an individual's
4 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

5 124. Here, the Applebee's Defendants discriminated against the
6 physically disabled public—including McIver—by denying them full and equal
7 access to the Applebee's Facility. The Applebee's Defendants also violated
8 McIver's rights under the ADA, and, therefore, infringed upon or violated (or
9 both) McIver's rights under the Disabled Persons Act.

10 125. For each offense of the Disabled Persons Act, McIver seeks actual
11 damages (both general and special damages), statutory minimum damages of one
12 thousand dollars (\$1,000), declaratory relief, and any other remedy available
13 under California Civil Code § 54.3.

14 126. He also seeks to enjoin the Applebee's Defendants from violating
15 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to
16 recover reasonable attorneys' fees and incurred under California Civil Code §§
17 54.3 and 55.

18 **XII. SEVENTH CLAIM**

19 **Unruh Civil Rights Act**

20 **(The Applebee's Facility)**

21 127. McIver incorporates the allegations contained in paragraphs 1
22 through 126 for this claim.

23 128. California Civil Code § 51 states, in part, that: All persons within
24 the jurisdiction of this state are entitled to the full and equal accommodations,
25 advantages, facilities, privileges, or services in all business establishments of
26 every kind whatsoever.

1 129. California Civil Code § 51.5 also states, in part, that: No business
2 establishment of any kind whatsoever shall discriminate against any person in
3 this state because of the disability of the person.

4 130. California Civil Code § 51(f) specifically incorporates (by
5 reference) an individual's rights under the ADA into the Unruh Act.

6 131. The Applebee's Defendants' aforementioned acts and omissions
7 denied the physically disabled public—including McIver—full and equal
8 accommodations, advantages, facilities, privileges and services in a business
9 establishment (because of their physical disability).

10 132. These acts and omissions (including the ones that violate the ADA)
11 denied, aided or incited a denial, or discriminated against McIver by violating
12 the Unruh Act.

13 133. McIver was damaged by the Applebee's Defendants' wrongful
14 conduct, and seeks statutory minimum damages of four thousand dollars
15 (\$4,000) for each offense.

16 134. McIver also seeks to enjoin the Applebee's Defendants from
17 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
18 costs incurred under California Civil Code § 52(a).

19 XIII. EIGHTH CLAIM

20 Denial of Full and Equal Access to Public Facilities

21 (The Applebee's Facility)

22 135. McIver incorporates the allegations contained in paragraphs 1
23 through 134 for this claim.

24 136. Health and Safety Code § 19955(a) states, in part, that: California
25 public accommodations or facilities (built with private funds) shall adhere to the
26 provisions of Government Code § 4450.

1 137. Health and Safety Code § 19959 states, in part, that: Every existing
2 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
3 altered or structurally repaired, is required to comply with this chapter.

4 138. McIver alleges the Applebee's Facility is a public accommodation
5 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
6 and Safety Code or Government Code § 4450 (or both), and that the Applebee's
7 Facility was not exempt under Health and Safety Code § 19956.

8 139. The Applebee's Defendants' non-compliance with these
9 requirements at the Applebee's Facility aggrieved (or potentially aggrieved)
10 McIver and other persons with physical disabilities. Accordingly, he seeks
11 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

12 XIV. NINTH CLAIM

13 **Americans with Disabilities Act of 1990**

14 Denial of "Full and Equal" Enjoyment and Use

15 (The Cost Plus Facility)

16 140. McIver incorporates the allegations contained in paragraphs 1
17 through 139 for this claim.

18 141. Title III of the ADA holds as a "general rule" that no individual
19 shall be discriminated against on the basis of disability in the full and equal
20 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
21 offered by any person who owns, operates, or leases a place of public
22 accommodation. 42 U.S.C. § 12182(a).

23 142. The Cost Plus Defendants discriminated against McIver by denying
24 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
25 accommodations of the Cost Plus Facility during each visit and each incident of
26 deterrence.

1 Failure to Remove Architectural Barriers in an Existing Facility

2 143. The ADA specifically prohibits failing to remove architectural
3 barriers, which are structural in nature, in existing facilities where such removal
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
5 achievable” is defined as “easily accomplishable and able to be carried out
6 without much difficulty or expense.” *Id.* § 12181(9).

7 144. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also specifically
10 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

11 145. Here, McIver alleges that the Cost Plus Defendants can easily
12 remove the architectural barriers at the Cost Plus Facility without much difficulty
13 or expense, and that the Cost Plus Defendants violated the ADA by failing to
14 remove those barriers, when it was readily achievable to do so.

15 146. In the alternative, if it was not “readily achievable” for the Cost Plus
16 Defendants to remove the Cost Plus Facility’s barriers, then the Cost Plus
17 Defendants violated the ADA by failing to make the required services available
18 through alternative methods, which are readily achievable.

19 Failure to Design and Construct an Accessible Facility

20 147. On information and belief, the Cost Plus Facility was designed or
21 constructed (or both) after January 26, 1992—independently triggering access
22 requirements under Title III of the ADA.

23 148. The ADA also prohibits designing and constructing facilities for
24 first occupancy after January 26, 1993, that aren’t readily accessible to, and
25 usable by, individuals with disabilities when it was structurally practicable to do
26 so. 42 U.S.C. § 12183(a)(1).

27 149. Here, the Cost Plus Defendants violated the ADA by designing or
28 constructing (or both) the Cost Plus Facility in a manner that was not readily

1 accessible to the physically disabled public—including McIver—when it was
2 structurally practical to do so.¹⁹

3 Failure to Make an Altered Facility Accessible

4 150. On information and belief, the Cost Plus Facility was modified after
5 January 26, 1992, independently triggering access requirements under the ADA.

6 151. The ADA also requires that facilities altered in a manner that affects
7 (or could affect) its usability must be made readily accessible to individuals with
8 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
9 an area that contains a facility's primary function also requires adding making
10 the paths of travel, bathrooms, telephones, and drinking fountains serving that
11 area accessible to the maximum extent feasible. *Id.*

12 152. Here, the Cost Plus Defendants altered the Cost Plus Facility in a
13 manner that violated the ADA and was not readily accessible to the physically
14 disabled public—including McIver—to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 153. The ADA also requires reasonable modifications in policies,
17 practices, or procedures, when necessary to afford such goods, services,
18 facilities, or accommodations to individuals with disabilities, unless the entity
19 can demonstrate that making such modifications would fundamentally alter their
20 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 154. Here, the Cost Plus Defendants violated the ADA by failing to make
22 reasonable modifications in policies, practices, or procedures at the Cost Plus
23 Facility, when these modifications were necessary to afford (and would not
24 fundamentally alter the nature of) these goods, services, facilities, or
25 accommodations.

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28 ¹⁹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

155. McIver seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

156. McIver also seeks a finding from this Court (*i.e.*, declaratory relief) that the Cost Plus Defendants violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

XV. TENTH CLAIM

Disabled Persons Act

(The Cost Plus Facility)

157. McIver incorporates the allegations contained in paragraphs 1 through 156 for this claim.

158. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

159. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

160. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

161. Here, the Cost Plus Defendants discriminated against the physically disabled public—including McIver—by denying them full and equal access to the Cost Plus Facility. The Cost Plus Defendants also violated McIver's rights under the ADA, and, therefore, infringed upon or violated (or both) McIver's rights under the Disabled Persons Act.

162. For each offense of the Disabled Persons Act, McIver seeks actual damages (both general and special damages), statutory minimum damages of one

1 thousand dollars (\$1,000), declaratory relief, and any other remedy available
2 under California Civil Code § 54.3.

3 163. He also seeks to enjoin the Cost Plus Defendants from violating the
4 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
5 recover reasonable attorneys' fees and incurred under California Civil Code §§
6 54.3 and 55.

7 **XVI. ELEVENTH CLAIM**

8 **Unruh Civil Rights Act**

9 (The Cost Plus Facility)

10 164. McIver incorporates the allegations contained in paragraphs 1
11 through 163 for this claim.

12 165. California Civil Code § 51 states, in part, that: All persons within
13 the jurisdiction of this state are entitled to the full and equal accommodations,
14 advantages, facilities, privileges, or services in all business establishments of
15 every kind whatsoever.

16 166. California Civil Code § 51.5 also states, in part, that: No business
17 establishment of any kind whatsoever shall discriminate against any person in
18 this state because of the disability of the person.

19 167. California Civil Code § 51(f) specifically incorporates (by
20 reference) an individual's rights under the ADA into the Unruh Act.

21 168. The Cost Plus Defendants' aforementioned acts and omissions
22 denied the physically disabled public—including McIver—full and equal
23 accommodations, advantages, facilities, privileges and services in a business
24 establishment (because of their physical disability).

25 169. These acts and omissions (including the ones that violate the ADA)
26 denied, aided or incited a denial, or discriminated against McIver by violating
27 the Unruh Act.

1 170. McIver was damaged by the Cost Plus Defendants' wrongful
2 conduct, and seeks statutory minimum damages of four thousand dollars
3 (\$4,000) for each offense.

4 171. McIver also seeks to enjoin the Cost Plus Defendants from violating
5 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
6 incurred under California Civil Code § 52(a).

7 **XVII. TWELFTH CLAIM**

8 **Denial of Full and Equal Access to Public Facilities**

9 (The Cost Plus Facility)

10 172. McIver incorporates the allegations contained in paragraphs 1
11 through 171 for this claim.

12 173. Health and Safety Code § 19955(a) states, in part, that: California
13 public accommodations or facilities (built with private funds) shall adhere to the
14 provisions of Government Code § 4450.

15 174. Health and Safety Code § 19959 states, in part, that: Every existing
16 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
17 altered or structurally repaired, is required to comply with this chapter.

18 175. McIver alleges the Cost Plus Facility is a public accommodation
19 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
20 and Safety Code or Government Code § 4450 (or both), and that the Cost Plus
21 Facility was not exempt under Health and Safety Code § 19956.

22 176. The Cost Plus Defendants' non-compliance with these requirements
23 at the Cost Plus Facility aggrieved (or potentially aggrieved) McIver and other
24 persons with physical disabilities. Accordingly, he seeks injunctive relief and
25 attorney fees pursuant to Health and Safety Code § 19953.

XVIII. THIRTEENTH CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Toys 'R' Us Facility)

177. McIver incorporates the allegations contained in paragraphs 1 through 176 for this claim.

178. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

179. The Toys 'R' Us Defendants discriminated against McIver by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Toys 'R' Us Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

180. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

181. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

182. Here, McIver alleges that the Toys 'R' Us Defendants can easily remove the architectural barriers at the Toys 'R' Us Facility without much

1 difficulty or expense, and that the Toys 'R' Us Defendants violated the ADA by
2 failing to remove those barriers, when it was readily achievable to do so.

3 183. In the alternative, if it was not "readily achievable" for the Toys 'R'
4 Us Defendants to remove the Toys 'R' Us Facility's barriers, then the Toys 'R' Us
5 Defendants violated the ADA by failing to make the required services available
6 through alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 184. On information and belief, the Toys 'R' Us Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 185. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren't readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 186. Here, the Toys 'R' Us Defendants violated the ADA by designing or
16 constructing (or both) the Toys 'R' Us Facility in a manner that was not readily
17 accessible to the physically disabled public—including McIver—when it was
18 structurally practical to do so.²⁰

19 Failure to Make an Altered Facility Accessible

20 187. On information and belief, the Toys 'R' Us Facility was modified
21 after January 26, 1992, independently triggering access requirements under the
22 ADA.

23 188. The ADA also requires that facilities altered in a manner that affects
24 (or could affect) its usability must be made readily accessible to individuals with
25 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
26 an area that contains a facility's primary function also requires adding making
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28 ²⁰ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 189. Here, the Toys 'R' Us Defendants altered the Toys 'R' Us Facility in
4 a manner that violated the ADA and was not readily accessible to the physically
5 disabled public—including McIver—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 190. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 191. Here, the Toys 'R' Us Defendants violated the ADA by failing to
13 make reasonable modifications in policies, practices, or procedures at the Toys
14 'R' Us Facility, when these modifications were necessary to afford (and would
15 not fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 192. McIver seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 193. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
21 that the Toys 'R' Us Defendants violated the ADA in order to pursue damages
22 under California's Unruh Civil Rights Act or Disabled Persons Act.

23 **XIX. FOURTEENTH CLAIM**

24 **Disabled Persons Act**

25 **(The Toys 'R' Us Facility)**

26 194. McIver incorporates the allegations contained in paragraphs 1
27 through 193 for this claim.

1 195. California Civil Code § 54 states, in part, that: Individuals with
 2 disabilities have the same right as the general public to the full and free use of
 3 the streets, sidewalks, walkways, public buildings and facilities, and other public
 4 places.

5 196. California Civil Code § 54.1 also states, in part, that: Individuals
 6 with disabilities shall be entitled to full and equal access to accommodations,
 7 facilities, telephone facilities, places of public accommodation, and other places
 8 to which the general public is invited.

9 197. Both sections specifically incorporate (by reference) an individual's
 10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11 198. Here, the Toys 'R' Us Defendants discriminated against the
 12 physically disabled public—including McIver—by denying them full and equal
 13 access to the Toys 'R' Us Facility. The Toys 'R' Us Defendants also violated
 14 McIver's rights under the ADA, and, therefore, infringed upon or violated (or
 15 both) McIver's rights under the Disabled Persons Act.

16 199. For each offense of the Disabled Persons Act, McIver seeks actual
 17 damages (both general and special damages), statutory minimum damages of one
 18 thousand dollars (\$1,000), declaratory relief, and any other remedy available
 19 under California Civil Code § 54.3.

20 200. He also seeks to enjoin the Toys 'R' Us Defendants from violating
 21 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to
 22 recover reasonable attorneys' fees and incurred under California Civil Code §§
 23 54.3 and 55.

24 XX. FIFTEENTH CLAIM

25 **Unruh Civil Rights Act**

26 (The Toys 'R' Us Facility)

27 201. McIver incorporates the allegations contained in paragraphs 1
 28 through 200 for this claim.

1 202. California Civil Code § 51 states, in part, that: All persons within
2 the jurisdiction of this state are entitled to the full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishments of
4 every kind whatsoever.

5 203. California Civil Code § 51.5 also states, in part, that: No business
6 establishment of any kind whatsoever shall discriminate against any person in
7 this state because of the disability of the person.

8 204. California Civil Code § 51(f) specifically incorporates (by
9 reference) an individual's rights under the ADA into the Unruh Act.

10 205. The Toys 'R' Us Defendants' aforementioned acts and omissions
11 denied the physically disabled public—including McIver—full and equal
12 accommodations, advantages, facilities, privileges and services in a business
13 establishment (because of their physical disability).

14 206. These acts and omissions (including the ones that violate the ADA)
15 denied, aided or incited a denial, or discriminated against McIver by violating
16 the Unruh Act.

17 207. McIver was damaged by the Toys 'R' Us Defendants' wrongful
18 conduct, and seeks statutory minimum damages of four thousand dollars
19 (\$4,000) for each offense.

20 208. McIver also seeks to enjoin the Toys 'R' Us Defendants from
21 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
22 costs incurred under California Civil Code § 52(a).

23 **XXI. SIXTEENTH CLAIM**

24 **Denial of Full and Equal Access to Public Facilities**

25 **(The Toys 'R' Us Facility)**

26 209. McIver incorporates the allegations contained in paragraphs 1
27 through 208 for this claim.

1 accommodations of the Party City Facility during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 217. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” *Id.* § 12181(9).

9 218. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 219. Here, McIver alleges that the Party City Defendants can easily
14 remove the architectural barriers at the Party City Facility without much
15 difficulty or expense, and that Party City violated the ADA by failing to remove
16 those barriers, when it was readily achievable to do so.

17 220. In the alternative, if it was not “readily achievable” for the Party
18 City Defendants to remove the Party City Facility’s barriers, then the Party City
19 Defendants violated the ADA by failing to make the required services available
20 through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 221. On information and belief, the Party City Facility was designed or
23 constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 222. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 223. Here, the Party City Defendants violated the ADA by designing or
2 constructing (or both) the Party City Facility in a manner that was not readily
3 accessible to the physically disabled public—including McIver—when it was
4 structurally practical to do so.²¹

5 Failure to Make an Altered Facility Accessible

6 224. On information and belief, the Party City Facility was modified after
7 January 26, 1992, independently triggering access requirements under the ADA.

8 225. The ADA also requires that facilities altered in a manner that affects
9 (or could affect) its usability must be made readily accessible to individuals with
10 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
11 an area that contains a facility's primary function also requires adding making
12 the paths of travel, bathrooms, telephones, and drinking fountains serving that
13 area accessible to the maximum extent feasible. *Id.*

14 226. Here, the Party City Defendants altered the Party City Facility in a
15 manner that violated the ADA and was not readily accessible to the physically
16 disabled public—including McIver—to the maximum extent feasible.

17 Failure to Modify Existing Policies and Procedures

18 227. The ADA also requires reasonable modifications in policies,
19 practices, or procedures, when necessary to afford such goods, services,
20 facilities, or accommodations to individuals with disabilities, unless the entity
21 can demonstrate that making such modifications would fundamentally alter their
22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

23 228. Here, the Party City Defendants violated the ADA by failing to
24 make reasonable modifications in policies, practices, or procedures at the Party
25 City Facility, when these modifications were necessary to afford (and would not
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28 ²¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 fundamentally alter the nature of) these goods, services, facilities, or
2 accommodations.

3 229. McIver seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 230. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
7 that the Party City Defendants violated the ADA in order to pursue damages
8 under California's Unruh Civil Rights Act or Disabled Persons Act.

9 **XXIII. EIGHTEENTH CLAIM**

10 **Disabled Persons Act**

11 (The Party City Facility)

12 231. McIver incorporates the allegations contained in paragraphs 1
13 through 230 for this claim.

14 232. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 233. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

22 234. Both sections specifically incorporate (by reference) an individual's
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 235. Here, the Party City Defendants discriminated against the physically
25 disabled public—including McIver—by denying them full and equal access to
26 the Party City Facility. The Party City Defendants also violated McIver's rights
27 under the ADA, and, therefore, infringed upon or violated (or both) McIver's
28 rights under the Disabled Persons Act.

237. He also seeks to enjoin the Party City Defendants from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

XXIV. NINETEENTH CLAIM

Unruh Civil Rights Act

(The Party City Facility)

12 238. McIver incorporates the allegations contained in paragraphs 1
13 through 237 for this claim.

239. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

18 240. California Civil Code § 51.5 also states, in part, that: No business
19 establishment of any kind whatsoever shall discriminate against any person in
20 this state because of the disability of the person.

21 241. California Civil Code § 51(f) specifically incorporates (by
22 reference) an individual's rights under the ADA into the Unruh Act.

242. The Party City Defendants' aforementioned acts and omissions denied the physically disabled public—including McIver—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

1 XXVI. TWENTY-FIRST CLAIM
2 **Americans with Disabilities Act of 1990**
3 Denial of "Full and Equal" Enjoyment and Use
4 (The Mervyn's Facility)

5 251. McIver incorporates the allegations contained in paragraphs 1
6 through 250 for this claim.

7 252. Title III of the ADA holds as a "general rule" that no individual
8 shall be discriminated against on the basis of disability in the full and equal
9 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
10 offered by any person who owns, operates, or leases a place of public
11 accommodation. 42 U.S.C. § 12182(a).

12 253. The Mervyn's Defendant discriminated against McIver by denying
13 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
14 accommodations of the Mervyn's Facility during each visit and each incident of
15 deterrence.

16 Failure to Remove Architectural Barriers in an Existing Facility

17 254. The ADA specifically prohibits failing to remove architectural
18 barriers, which are structural in nature, in existing facilities where such removal
19 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
20 achievable" is defined as "easily accomplishable and able to be carried out
21 without much difficulty or expense." *Id.* § 12181(9).

22 255. When an entity can demonstrate that removal of a barrier is not
23 readily achievable, a failure to make goods, services, facilities, or
24 accommodations available through alternative methods is also specifically
25 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

26 256. Here, McIver alleges that the Mervyn's Defendant can easily remove
27 the architectural barriers at the Mervyn's Facility without much difficulty or
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1 expense, and that Mervyn's violated the ADA by failing to remove those barriers,
2 when it was readily achievable to do so.

3 257. In the alternative, if it was not "readily achievable" for the Mervyn's
4 Defendant to remove the Mervyn's Facility's barriers, then the Mervyn's
5 Defendant violated the ADA by failing to make the required services available
6 through alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 258. On information and belief, the Mervyn's Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 259. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren't readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 260. Here, the Mervyn's Defendant violated the ADA by designing or
16 constructing (or both) the Mervyn's Facility in a manner that was not readily
17 accessible to the physically disabled public—including McIver—when it was
18 structurally practical to do so.²²

19 Failure to Make an Altered Facility Accessible

20 261. On information and belief, the Mervyn's Facility was modified after
21 January 26, 1992, independently triggering access requirements under the ADA.

22 262. The ADA also requires that facilities altered in a manner that affects
23 (or could affect) its usability must be made readily accessible to individuals with
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
25 an area that contains a facility's primary function also requires adding making
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28 ²² Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 263. Here, the Mervyn's Defendant altered the Mervyn's Facility in a
4 manner that violated the ADA and was not readily accessible to the physically
5 disabled public—including McIver—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 264. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 265. Here, the Mervyn's Defendant violated the ADA by failing to make
13 reasonable modifications in policies, practices, or procedures at the Mervyn's
14 Facility, when these modifications were necessary to afford (and would not
15 fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 266. McIver seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 267. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
21 that the Mervyn's Defendant violated the ADA in order to pursue damages under
22 California's Unruh Civil Rights Act or Disabled Persons Act.

23 **XXVII. TWENTY-SECOND CLAIM**

24 **Disabled Persons Act**

25 (The Mervyn's Facility)

26 268. McIver incorporates the allegations contained in paragraphs 1
27 through 267 for this claim.

277. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

278. California Civil Code § 51(f) specifically incorporates (by
reference) an individual's rights under the ADA into the Unruh Act.

279. The Mervyn's Defendant's aforementioned acts and omissions denied the physically disabled public—including McIver—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

14 280. These acts and omissions (including the ones that violate the ADA)
15 denied, aided or incited a denial, or discriminated against McIver by violating
16 the Unruh Act.

17 281. McIver was damaged by the Mervyn's Defendant's wrongful
18 conduct, and seeks statutory minimum damages of four thousand dollars
19 (\$4,000) for each offense.

20 282. McIver also seeks to enjoin the Mervyn's Defendant from violating
21 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
22 incurred under California Civil Code § 52(a).

XXIX. TWENTY-FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Mervyn's Facility)

26 283. McIver incorporates the allegations contained in paragraphs 1
27 through 282 for this claim.

1 284. Health and Safety Code § 19955(a) states, in part, that: California
2 public accommodations or facilities (built with private funds) shall adhere to the
3 provisions of Government Code § 4450.

4 285. Health and Safety Code § 19959 states, in part, that: Every existing
5 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
6 altered or structurally repaired, is required to comply with this chapter.

7 286. McIver alleges the Mervyn's Facility is a public accommodation
8 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
9 and Safety Code or Government Code § 4450 (or both), and that the Mervyn's
10 Facility was not exempt under Health and Safety Code § 19956.

11 287. The Mervyn's Defendant's non-compliance with these requirements
12 at the Mervyn's Facility aggrieved (or potentially aggrieved) McIver and other
13 persons with physical disabilities. Accordingly, he seeks injunctive relief and
14 attorney fees pursuant to Health and Safety Code § 19953.

15 XXX. TWENTY-FIFTH CLAIM

16 **Americans with Disabilities Act of 1990**

17 Denial of "Full and Equal" Enjoyment and Use

18 (The Target Facility)

19 288. McIver incorporates the allegations contained in paragraphs 1
20 through 287 for this claim.

21 289. Title III of the ADA holds as a "general rule" that no individual
22 shall be discriminated against on the basis of disability in the full and equal
23 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
24 offered by any person who owns, operates, or leases a place of public
25 accommodation. 42 U.S.C. § 12182(a).

26 290. The Target Defendant discriminated against McIver by denying
27 "full and equal enjoyment" and use of the goods, services, facilities, privileges or
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1 accommodations of the Target Facility during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 291. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” *Id.* § 12181(9).

9 292. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 293. Here, McIver alleges that the Target Defendant can easily remove
14 the architectural barriers at the Target Facility without much difficulty or
15 expense, and that Target violated the ADA by failing to remove those barriers,
16 when it was readily achievable to do so.

17 294. In the alternative, if it was not “readily achievable” for the Target
18 Defendant to remove the Target Facility’s barriers, then the Target Defendant
19 violated the ADA by failing to make the required services available through
20 alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 295. On information and belief, the Target Facility was designed or
23 constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 296. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 297. Here, the Target Defendant violated the ADA by designing or
2 constructing (or both) the Target Facility in a manner that was not readily
3 accessible to the physically disabled public—including McIver—when it was
4 structurally practical to do so.²³

5 Failure to Make an Altered Facility Accessible

6 298. On information and belief, the Target Facility was modified after
7 January 26, 1992, independently triggering access requirements under the ADA.

8 299. The ADA also requires that facilities altered in a manner that affects
9 (or could affect) its usability must be made readily accessible to individuals with
10 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
11 an area that contains a facility's primary function also requires adding making
12 the paths of travel, bathrooms, telephones, and drinking fountains serving that
13 area accessible to the maximum extent feasible. Id.

14 300. Here, the Target Defendant altered the Target Facility in a manner
15 that violated the ADA and was not readily accessible to the physically disabled
16 public—including McIver—to the maximum extent feasible.

17 Failure to Modify Existing Policies and Procedures

18 301. The ADA also requires reasonable modifications in policies,
19 practices, or procedures, when necessary to afford such goods, services,
20 facilities, or accommodations to individuals with disabilities, unless the entity
21 can demonstrate that making such modifications would fundamentally alter their
22 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

23 302. Here, the Target Defendant violated the ADA by failing to make
24 reasonable modifications in policies, practices, or procedures at the Target
25 Facility, when these modifications were necessary to afford (and would not
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28 ²³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 fundamentally alter the nature of) these goods, services, facilities, or
2 accommodations.

3 303. McIver seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 304. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
7 that the Target Defendant violated the ADA in order to pursue damages under
8 California's Unruh Civil Rights Act or Disabled Persons Act.

9 XXXI. TWENTY-SIXTH CLAIM

10 **Disabled Persons Act**

11 (The Target Facility)

12 305. McIver incorporates the allegations contained in paragraphs 1
13 through 304 for this claim.

14 306. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 307. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

22 308. Both sections specifically incorporate (by reference) an individual's
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 309. Here, the Target Defendant discriminated against the physically
25 disabled public—including McIver—by denying them full and equal access to
26 the Target Facility. The Target Defendant also violated McIver's rights under
27 the ADA, and, therefore, infringed upon or violated (or both) McIver's rights
28 under the Disabled Persons Act.

9 XXXII. TWENTY-SEVENTH CLAIM

(The Target Facility)

14 313. California Civil Code § 51 states, in part, that: All persons within
15 the jurisdiction of this state are entitled to the full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishments of
17 every kind whatsoever.

315. California Civil Code § 51(f) specifically incorporates (by
reference) an individual's rights under the ADA into the Unruh Act.

McIver v. Escondido Promenade
Plaintiff's Complaint

XXXIV. TWENTY-NINTH CLAIM
Americans with Disabilities Act of 1990
Denial of "Full and Equal" Enjoyment and Use
 (the Common Area Facility)

325. McIver incorporates the allegations contained in paragraphs 1 through 324 for this claim.

326. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

327. The Common Area Defendant discriminated against McIver by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Common Area Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

328. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

329. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

330. Here, McIver alleges that the Common Area Defendant can easily remove the architectural barriers at the Common Area Facility without much

1 difficulty or expense, and that the Common Area Defendant violated the ADA by
2 failing to remove those barriers, when it was readily achievable to do so.

3 331. In the alternative, if it was not “readily achievable” for the Common
4 Area Defendant to remove the Common Area Facility’s barriers, then the
5 Common Area Defendant violated the ADA by failing to make the required
6 services available through alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 332. On information and belief, the Common Area Facility was designed
9 or constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 333. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren’t readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 334. Here, the Common Area Defendant violated the ADA by designing
16 or constructing (or both) the Common Area Facility in a manner that was not
17 readily accessible to the physically disabled public—including McIver—when it
18 was structurally practical to do so.²⁴

19 Failure to Make an Altered Facility Accessible

20 335. On information and belief, the Common Area Facility was modified
21 after January 26, 1992, independently triggering access requirements under the
22 ADA.

23 336. The ADA also requires that facilities altered in a manner that affects
24 (or could affect) its usability must be made readily accessible to individuals with
25 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
26 an area that contains a facility’s primary function also requires adding making
27

28 ²⁴ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 337. Here, the Common Area Defendant altered the Common Area
4 Facility in a manner that violated the ADA and was not readily accessible to the
5 physically disabled public—including McIver—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 338. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 339. Here, the Common Area Defendant violated the ADA by failing to
13 make reasonable modifications in policies, practices, or procedures at the
14 Common Area Facility, when these modifications were necessary to afford (and
15 would not fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 340. McIver seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 341. McIver also seeks a finding from this Court (*i.e.*, declaratory relief)
21 that the Common Area Defendant violated the ADA in order to pursue damages
22 under California's Unruh Civil Rights Act or Disabled Persons Act.

23 XXXV. THIRTIETH CLAIM

24 **Disabled Persons Act**

25 (The Common Area Facility)

26 342. McIver incorporates the allegations contained in paragraphs 1
27 through 341 for this claim.

1 343. California Civil Code § 54 states, in part, that: Individuals with
2 disabilities have the same right as the general public to the full and free use of
3 the streets, sidewalks, walkways, public buildings and facilities, and other public
4 places.

5 344. California Civil Code § 54.1 also states, in part, that: Individuals
6 with disabilities shall be entitled to full and equal access to accommodations,
7 facilities, telephone facilities, places of public accommodation, and other places
8 to which the general public is invited.

9 345. Both sections specifically incorporate (by reference) an individual's
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11 346. Here, the Common Area Defendant discriminated against the
12 physically disabled public—including McIver—by denying them full and equal
13 access to the Common Area Facility. The Common Area Defendant also
14 violated McIver's rights under the ADA, and, therefore, infringed upon or
15 violated (or both) McIver's rights under the Disabled Persons Act.

16 347. For each offense of the Disabled Persons Act, McIver seeks actual
17 damages (both general and special damages), statutory minimum damages of one
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available
19 under California Civil Code § 54.3.

20 348. He also seeks to enjoin the Common Area Defendant from violating
21 the Disabled Persons Act (and ADA) under California Civil Code § 55, and to
22 recover reasonable attorneys' fees and incurred under California Civil Code §§
23 54.3 and 55.

24 XXXVI. THIRTY-FIRST CLAIM

25 **Unruh Civil Rights Act**

26 (The Common Area Facility)

27 349. McIver incorporates the allegations contained in paragraphs 1
28 through 348 for this claim.

1 350. California Civil Code § 51 states, in part, that: All persons within
2 the jurisdiction of this state are entitled to the full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishments of
4 every kind whatsoever.

5 351. California Civil Code § 51.5 also states, in part, that: No business
6 establishment of any kind whatsoever shall discriminate against any person in
7 this state because of the disability of the person.

8 352. California Civil Code § 51(f) specifically incorporates (by
9 reference) an individual's rights under the ADA into the Unruh Act.

10 353. The Common Area Defendant's aforementioned acts and omissions
11 denied the physically disabled public—including McIver—full and equal
12 accommodations, advantages, facilities, privileges and services in a business
13 establishment (because of their physical disability).

14 354. These acts and omissions (including the ones that violate the ADA)
15 denied, aided or incited a denial, or discriminated against McIver by violating
16 the Unruh Act.

17 355. McIver was damaged by the Common Area Defendant's wrongful
18 conduct, and seeks statutory minimum damages of four thousand dollars
19 (\$4,000) for each offense.

20 356. McIver also seeks to enjoin the Common Area Defendant from
21 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
22 costs incurred under California Civil Code § 52(a).

23 XXXVII. THIRTY-SECOND CLAIM

24 **Denial of Full and Equal Access to Public Facilities**

25 (The Common Area Facility)

26 357. McIver incorporates the allegations contained in paragraphs 1
27 through 356 for this claim.

358. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

359. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

360. McIver alleges the Common Area Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Common Area Facility was not exempt under Health and Safety Code § 19956.

361. The Common Area Defendant's non-compliance with these requirements at the Common Area Facility aggrieved (or potentially aggrieved) McIver and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XXXVIII. PRAYER FOR RELIEF

WHEREFORE, McIver prays judgment against the La Salsa Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the La Salsa Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.²⁵
5. Interest at the legal rate from the date of the filing of this action.

²⁵ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
McIver v. Escondido Promenade
Plaintiff's Complaint

XXXIX. PRAYER FOR RELIEF

WHEREFORE, McIver prays judgment against the Applebee's Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Applebee's Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.²⁶
5. Interest at the legal rate from the date of the filing of this action.

XL. PRAYER FOR RELIEF

WHEREFORE, McIver prays judgment against the Cost Plus Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Cost Plus Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.²⁷
5. Interest at the legal rate from the date of the filing of this action.

XLI. PRAYER FOR RELIEF

WHEREFORE, McIver prays judgment against the Toys 'R' Us Defendants for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Toys 'R' Us Defendants violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

²⁶ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

²⁷ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
2 California Civil Code (but not both) according to proof.

3 4. Attorneys' fees, litigation expenses, and costs of suit.²⁸

4 5. Interest at the legal rate from the date of the filing of this action.

5 XLII. PRAYER FOR RELIEF

6 WHEREFORE, McIver prays judgment against the Party City Defendants for:

7 1. Injunctive relief, preventive relief, or any other relief the Court deems
8 proper.

9 2. Declaratory relief that the Party City Defendants violated the ADA for the
10 purposes of Unruh Act or Disabled Persons Act damages.

11 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
12 California Civil Code (but not both) according to proof.

13 4. Attorneys' fees, litigation expenses, and costs of suit.²⁹

14 5. Interest at the legal rate from the date of the filing of this action.

15 XLIII. PRAYER FOR RELIEF

16 WHEREFORE, McIver prays judgment against the Mervyn's Defendant for:

17 1. Injunctive relief, preventive relief, or any other relief the Court deems
18 proper.

19 2. Declaratory relief that the Mervyn's Defendant violated the ADA for the
20 purposes of Unruh Act or Disabled Persons Act damages.

21 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
22 California Civil Code (but not both) according to proof.

23 4. Attorneys' fees, litigation expenses, and costs of suit.³⁰

24 5. Interest at the legal rate from the date of the filing of this action.

27 ²⁸ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

28 ²⁹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

³⁰ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

XLIV. PRAYER FOR RELIEF

WHEREFORE, McIver prays judgment against the Target Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Target Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.³¹
5. Interest at the legal rate from the date of the filing of this action.

XLV. PRAYER FOR RELIEF

WHEREFORE, McIver prays judgment against the Common Area Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Common Area Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.³²
5. Interest at the legal rate from the date of the filing of this action.

DATED: January 21, 2008 DISABLED ADVOCACY GROUP, APLC



LYNN HUBBARD, III
Attorney for Plaintiff, Larry McIver

³¹ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

³² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LARRY McIVER

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

DEFENDANTS

Please see attached list

08 JAN 23 PM 3:42

County of Residence of First Listed Defendant HERNANDEZ DISTRICT COURT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED. BY: mm DEPUTY

Attorneys (If Known)

'08 CV 0132 IEG WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Product Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/21/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

146786

AMOUNT

350

APPLYING IFP

JUDGE

MAG. JUDGE

1/23/08

LIST OF DEFENDANTS

1. TARGET CORPORATION dba TARGET #274
2. COST PLUS, INC. dba COST PLUS WORLD MARKET #145
3. FRIT ESCONDIDO PROMENADE, LLC
4. LA SALSA, INC. dba LA SALSA #93
5. APPLEBEE'S RESTAURANTS WEST, LLC dba APPLEBEE'S
NEIGHBORHOOD BAR & GRILL #5711
6. TOYS 'R' US – DELAWARE, INC. dba TOYS 'R' US #5633
7. PARTY CITY CORPORATION dba PARTY CITY OF ESCONDIDO #445
8. INLAND WESTERN MDS PORTFOLIO, LLC

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 146786 - SR
* * C O P Y * *
January 23, 2008
15:31:26**

Civ Fil Non-Pris

USAO #: 08CV0132 CIV. FIL.
Judge...: IRMA E GONZALEZ
Amount.: \$350.00 CK
Check#: BC#20578

Total-> \$350.00

**FROM: MCIVER V. TARGET, ET AL
CIVIL FILING**